

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NEAL A. BELT,)
Plaintiff,) Case No. C04-2490-JCC-JPD
v.)
JO ANNE B. BARNHART, Commissioner,) REPORT AND RECOMMENDATION
Social Security Administration,)
Defendant.)
_____)

Plaintiff Neil A. Belt proceeds through counsel in his appeal of a final decision of the Commissioner of the Social Security Administration (the “Commissioner”). The Commissioner denied plaintiff’s application for Supplemental Security Income (“SSI”) benefits under Title XVI of the Social Security Act after a hearing before an administrative law judge (“ALJ”). For the reasons set forth below, the Court recommends that the ALJ’s decision be affirmed and that this suit be dismissed.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff is a forty-six-year-old father with a work history primarily limited to cutting hair. AR 52, 177, 182, 203. He has a high-school education, a history of intermittent incarceration, and presently subsists upon various forms of public assistance. AR 172, 177, 192, 481. On March 13, 2001, plaintiff applied for SSI benefits, alleging that he became

01 disabled on July 1, 1995.¹ AR 169, 176. Plaintiff alleges disability stemming from severe
 02 chronic depression and low back pain. AR 202. Plaintiff's application was denied both
 03 initially and upon reconsideration. AR 126, 132.

04 Plaintiff requested a hearing, which was held before an ALJ on April 16, 2003. AR
 05 48, 151. The ALJ, however, denied plaintiff's application in a decision dated October 1,
 06 2003. AR 34-47. The ALJ found plaintiff suffered from the severe impairments of lumbar
 07 disc disease, depressive disorder, and personality disorder, but found that they did not prevent
 08 plaintiff from being able to perform other work available in the national economy. AR 46-47.
 09 Plaintiff requested an appeal, but the Appeals Council denied his request on October 27,
 10 2004. AR 8. The ALJ's decision therefore became the final decision of the Commissioner
 11 for purposes of this Court's review.

12 Plaintiff timely filed this complaint to appeal the ALJ's decision. Dkt. No. 3.

13 II. JURISDICTION

14 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §§
 15 405(g) and 1383(c)(3).

16 III. STANDARD OF REVIEW

17 The district court may set aside the Commissioner's denial of social security benefits
 18 when the ALJ's findings are based on legal error or not supported by substantial evidence in
 19 the record as a whole. *See* 42 U.S.C. § 405(g); *Smolen v. Chater*, 80 F.3d 1273, 1279 (9th
 20 Cir. 1996) (internal citations omitted). Substantial evidence is defined as more than a mere
 21 scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might
 22 accept as adequate to support a conclusion. *Smolen*, 80 F.3d at 1279. The ALJ is responsible
 23 for determining credibility, resolving conflicts in medical testimony, and for resolving
 24 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). Where the evidence is

25
 26 ¹Plaintiff has also applied for benefits on two previous occasions, but both applications
 were denied. AR 88, 117, 123, 169.

01 susceptible to more than one rational interpretation, it is the Commissioner's conclusion that
 02 must be upheld. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (quoting *Smolen*, 80
 03 F.3d at 1292).

04 If the Court determines that the ALJ erred, the Court has discretion to remand for
 05 further proceedings or to award benefits. *See Marcia v. Sullivan*, 900 F.2d 172, 176 (9th Cir.
 06 1990). The Court may direct an award of benefits where "the record has been fully developed
 07 and further administrative proceedings would serve no useful purpose." *McCartey v.*
 08 *Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002).

09 Such a circumstance arises when: (1) the ALJ has failed to provide legally
 10 sufficient reasons for rejecting the claimant's evidence; (2) there are no
 11 outstanding issues that must be resolved before a determination of disability can
 12 be made; and (3) it is clear from the record that the ALJ would be required to
 13 find the claimant disabled if he considered the claimant's evidence.

14 *Id.* at 1076-77.

15 IV. EVALUATING DISABILITY

16 As the claimant, Mr. Belt bears the burden of proving that he is disabled within the
 17 meaning of the Social Security Act. *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999).
 18 Disability is defined as the "inability to engage in any substantial gainful activity by reason of
 19 any medically determinable physical or mental impairment, which can be expected to result in
 20 death, or which has lasted or can be expected to last for a continuous period of not less than
 21 twelve months[.]" 42 U.S.C. § 423(d)(1)(A). A claimant is disabled only if his impairments
 22 are of such severity that he is not only unable to do his previous work, but cannot, considering
 23 his age, education, and work experience, engage in any other substantial gainful activity
 24 existing in the national economy. *See* 42 U.S.C. §§ 423(d)(2)(A), 1382(c)(a)(3)(B); *see also*
 25 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

26 The social security regulations set out a five-step sequential evaluation process for
 27 determining whether a claimant is disabled within the meaning of the Social Security Act. *See*

01 20 C.F.R. §§ 404.1520, 416.920. At step one, the claimant must establish that he is not
02 engaging in any substantial gainful activity. 20 C.F.R. §§ 404.1520(b), 416.920(b). If the
03 claimant does so, then at step two, the claimant must establish that he has one or more
04 medically severe impairments or combination of impairments that limit his physical or mental
05 ability to do basic work activities. If the claimant does not have such impairments, he is not
06 disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does have a severe
07 impairment, the Commissioner moves to step three to determine whether the impairment meets
08 or equals any of the listed impairments described in the regulations. 20 C.F.R. §§ 404.1520(d),
09 416.920(d). A claimant who meets one of the listings for the required twelve-month duration
10 requirement is disabled. *Id.*

11 When the claimant's impairment neither meets nor equals one of the impairments listed
12 in the regulations, the Commissioner must proceed to step four and evaluate the claimant's
13 residual functional capacity ("RFC"). 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the
14 Commissioner evaluates the physical and mental demands of the claimant's past relevant work
15 to determine whether the claimant can still perform that work. *Id.* If the claimant is not able to
16 perform his past relevant work, then the burden shifts to the Commissioner at step five to show
17 that the claimant can perform some other work that exists in significant numbers in the national
18 economy, taking into consideration the claimant's RFC, age, education, and work experience.
19 20 C.F.R. §§ 404.1520(f), 416.920(f); *Tackett*, 180 F.3d at 1099-100. If the Commissioner
20 finds the claimant is unable to perform other work, then the claimant is found disabled and
21 benefits may be awarded.

22 **V. DECISION BELOW**

23 On October 1, 2003, the ALJ issued a decision denying plaintiff's request for benefits
24 finding, *inter alia*:

25
26

01 * * *

02 3. The claimant has degenerative lumbar disc disease; a depressive
03 disorder; and a personality disorder. These impairments are severe, but
04 they do not meet or equal the criteria of any of the impairments listed
05 in Appendix 1, Subpart P, Regulations No. 4.

06 4. The claimant's statements concerning his impairments and their impact
07 on his ability to work are not entirely credible in light of information
08 contained in the medical reports and other evidence of record.

09 5. The claimant retains the residual functional capacity to lift and carry 20
10 pounds occasionally and 10 pounds frequently. He can sit or
11 stand/walk for 6 hours each in an 8-hour workday. He should avoid
12 heights or hazards. He should have limited contact with co-workers
13 and supervisors, and not with the public.

14 * * *

15 9. Although the claimant is unable to perform the full range of light work,
16 he is capable of performing other work that exists in substantial
17 numbers. Such work includes positions such as cleaner/housekeeper
18 (DOT 323.687-010), with 5,800 jobs in the state, 295,000 jobs
19 nationally; and small products assembler (DOT 706.684-022), with
20 4,500 state jobs and 325,000 jobs nationally. A finding of "not
21 disabled" is therefore reached within the framework of the above-cited
22 rule.

23 10. The claimant has not been under a disability, as defined in the Social
24 Security Act, at any time through the date of this decision.

25 AR 46-47.

26 VI. ISSUES ON APPEAL

27 In this case, at step five, a vocational expert ("VE") was called to testify. The ALJ
28 provided a hypothetical, consistent with the ALJ's RFC finding above (Finding No. 5). The
29 VE testified that accepting the ALJ's RFC analysis, jobs for the plaintiff existed in the
30 economy. AR 82-83. However, the VE also testified that if the plaintiff was found to be
31 testifying credibly, then his mental health impairments — and particularly his depression and
32 his inability to deal with anger — would mean that no jobs existed for him. AR 83-86.

33 The ALJ determined that the plaintiff was not credible. Finding 4; AR 46. Although
34 the plaintiff's brief suggests that the ALJ committed many errors, the primary thrust of the

01 appeal is the ALJ did not properly assess the limitations imposed by plaintiff's mental-health
02 impairments. The plaintiff also argues that because the RFC finding did not include all
03 limitations imposed by his mental-health impairments, the hypothetical asked of the
04 vocational expert at step five was inadequate. Resolution of this appeal therefore requires an
05 examination of three issues:

- 06 A. Did the ALJ err in reaching an adverse credibility determination?
- 07 B. Did the ALJ properly consider and evaluate the proffered medical evidence
08 regarding the plaintiff's mental health?
- 09 C. Was the ALJ's hypothetical to the vocational expert inaccurate and
incomplete?

10 VII. DISCUSSION

11 A. The ALJ Did Not Err in Reaching an Adverse Credibility Determination.

12 According to the Commissioner's regulations, a determination of whether to accept a
13 claimant's subjective symptom testimony requires a two step analysis. 20 C.F.R. §§ 404.1529,
14 416.929; *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); SSR 96-7p (1996). First, the
15 ALJ must determine whether there is a medically determinable impairment that reasonably
16 could be expected to cause the claimant's symptoms. 20 C.F.R. §§ 404.1529(b), 416.929(b);
17 *Smolen*, 80 F.3d at 1281-2; SSR 96-7p. Once a claimant produces medical evidence of an
18 underlying impairment, the ALJ may not discredit the claimant's testimony as to the severity of
19 symptoms solely because they are unsupported by objective medical evidence. *Bunnell v.*
20 *Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991) (en banc); *Reddick v. Chater*, 157 F.3d 715, 722
21 (9th Cir. 1998) (internal citations omitted). Absent affirmative evidence showing that the
22 claimant is malingering, the ALJ must provide "clear and convincing" reasons for rejecting the
23 claimant's testimony. *Smolen*, 80 F.3d at 1284; *Reddick*, 157 F.3d at 722.

24 When evaluating a claimant's credibility, the ALJ must specifically identify what
25 testimony is not credible and what evidence undermines the claimant's complaints; general
26 findings are insufficient. *Smolen*, 80 F.3d at 1284; *Reddick*, 157 F.3d at 722. The ALJ may

01 consider “ordinary techniques of credibility evaluation” including a reputation for truthfulness,
02 inconsistencies in testimony or between testimony and conduct, daily activities, work record,
03 and testimony from physicians and third parties concerning the nature, severity, and effect of
04 the symptoms of which he complains. *Smolen*, 80 F.3d at 1284; *see also Light v. Social Sec.*
05 *Admin.*, 119 F.3d 789, 792 (9th Cir. 1997) (internal citations omitted).

06 In this case, the ALJ found the plaintiff to be a “highly manipulative witness with little
07 or no veracity.” AR 44. The ALJ considered plaintiff’s statements regarding the extent of
08 his impairments and found them “not credible” in light of the record as a whole. AR 40. The
09 ALJ provided appropriate reasons for finding plaintiff not credible. This finding is
10 significant, because the ALJ expressed concerns that certain medical opinions relating to
11 plaintiff’s mental health conditions could have been influenced unduly by over-reliance on
12 plaintiff’s self-reporting.

13 The ALJ noted that the record contained many differences in the plaintiff’s
14 presentation when he was being seen by his psychiatrists as opposed to being seen by doctors
15 to treat his physical problems. AR 44. He noted “much of the psychiatric assessments are
16 based on claimant’s own recounting of his history and symptoms. Where there has been
17 direct observation of his symptoms and functioning, he has never appeared as impaired as his
18 descriptions.” *Id.* The ALJ also found that, despite plaintiff’s testimony where he claimed he
19 suffered physical limitations of back pain from degenerative disc disease, and pain after
20 walking for four to five minutes or sitting for only ten to fifteen minutes (AR 39, 55), he was,
21 in fact, able to maintain a variety of “vigorous” social activities. AR 39, 40, 43-44. Indeed,
22 the plaintiff engaged in snowboarding, played ping pong, went swimming, and performed a
23 variety of household tasks. AR 54-55, 58. The reasons offered by the ALJ are sufficiently
24 clear and convincing to justify his adverse credibility determination.

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26

01 B. The ALJ Properly Considered and Evaluated the Medical Evidence Necessary
 02 to Determine Plaintiff's RFC Accurately.

03 Because treating physicians are employed to cure and thus have a greater opportunity
 04 to know and observe the patient as an individual, their opinions are given greater weight than
 05 the opinions of other physicians. *Rodriguez v. Bowen*, 876 F.2d 759, 761 (9th Cir. 1989). A
 06 treating physician's opinion, however, is not necessarily conclusive as to either a physical
 07 condition or the ultimate issue of disability. *Id.* at 761-62 & n.7. When a treating physician's
 08 opinion is not contradicted by another physician, it may be rejected only for "clear and
 09 convincing" reasons supported by substantial evidence in the record. *Reddick v. Chater*, 157
 10 F.3d 715, 725 (9th Cir. 1998). When rejecting uncontraverted medical opinions, the ALJ must
 11 explain his reasons for rejecting them in proper detail. *Embrey v. Bowen*, 849 F.2d 418, 422
 12 (9th Cir. 1988).

13 Similarly, an ALJ may reject a treating physician's controverted medical opinion by
 14 providing "specific and legitimate" reasons based on substantial evidence in the record.
 15 *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499,
 16 502 (9th Cir. 1983). The ALJ can meet this burden by setting out a detailed and thorough
 17 summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and
 18 making findings." *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (internal citations
 19 omitted). An ALJ may reject medical opinions based upon check-the-box type reports that
 20 lack a narrative explanation for their conclusions. *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir.
 21 1996) (internal citations omitted). Courts are not obligated to accept any treating physician's
 22 opinion that is brief and conclusory in form and that offers few clinical findings to support its
 23 conclusions. *Magallenes*, 881 F.2d at 751.

24 The ALJ found the plaintiff had a personality disorder and a depressive disorder. AR
 25 46. The plaintiff contends, however, that the ALJ erred by finding that these impairments
 26 caused the plaintiff to suffer only moderate limitations of social functioning and that he

01 ignored evidence from physicians supporting a greater limitation. Dkt. No. 11. He argues
02 that the ALJ should have made “better inferences,” that there were alternative “reasonable
03 inferences,” and that the ALJ could have made what he calls “fair inferences.” Dkt. No. 12 at
04 20-21. As discussed below, however, the ALJ’s evaluation of the medical evidence was
05 supported by substantial evidence as that term is defined, and should be affirmed.

06 1. Dr. Cahn. Dr. Cahn treated plaintiff over the course of two years and
07 diagnosed him with depression, possible post-traumatic stress disorder (“PTSD”), intermittent
08 explosive disorder, and a personality disorder. AR 481-82. Dr. Cahn expressed doubt at
09 plaintiff’s ability to “function as a wage earner” because of his interpersonal difficulties, anger
10 management problems and tendency to over-react. AR 483. He also checked boxes in a form
11 indicating that plaintiff’s impairments caused marked difficulty with judgment, interacting with
12 coworkers and supervisors, and dealing with work pressure. AR 478.

13 The ALJ gave Dr. Cahn’s opinions “substantial consideration[,]” because they were
14 generally consistent with other opinions found in the record. AR 42. Indeed, the decision
15 acknowledges plaintiff’s social and interpersonal limitations. Nevertheless, the ALJ rejected
16 Dr. Cahn’s more restrictive limitations, because he believed Dr. Cahn relied too heavily on
17 plaintiff’s self-reporting, and because he determined the restrictions to be inconsistent with
18 the record overall. AR 42-43. The ALJ also attached less weight to certain limitations found
19 by Dr. Cahn by noting that they were on a check-box form that was not supported by specific
20 clinical findings or references to the record. AR 40.

21 In this case, the ALJ properly evaluated Dr. Cahn’s opinion and gave adequate reasons
22 for discounting portions of that opinion. The ALJ identified several reasons why Dr. Cahn’s
23 reliance on plaintiff’s self-reporting may have undermined his diagnoses. He relied heavily
24 upon inconsistencies between the reportedly disabling effects of plaintiff’s impairments and
25 the extent of his physical daily activities. AR 40, 42-44. The ALJ also noted that the
26 limitations Dr. Cahn assigned to plaintiff were inconsistent with his activities of daily living.

01 AR 42. As set out above, plaintiff testified that he engaged in snowboarding, swimming,
 02 sledding, playing pool, and other activities. AR 58. He also does his own housework,
 03 including dishes, cleaning, grocery shopping, and managing his budget. AR 54-55. The ALJ
 04 also noted inconsistencies regarding plaintiff's reported use of illicit drugs. AR 41.
 05 Moreover, the ALJ observed that the record — including other medical opinions — showed
 06 that plaintiff's mental impairments did not prevent him from being able to work. AR 43-44,
 07 372, 386. Finally, the ALJ observed that cited limitations were on a check-the-box form,
 08 which provided little explanation for the bases of the checked limitation. Such forms are
 09 entitled to less weight. *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996). The ALJ did not
 10 err in his assessments of Dr. Cahn's reports.

11 2. Community Psychiatric Clinic and Dr. Kersey. The ALJ considered but did
 12 not attach great significance to opinions of the mental-health workers at the Community
 13 Psychiatric Clinic ("CPC"). These mental-health workers diagnosed plaintiff with dysthymic
 14 disorder, arthritis, and back pain. AR 413. They also assessed him with a GAF score of 48.²
 15 AR 413. The ALJ, "considered" these opinions but did not "completely" adopt them. AR 40.
 16 Specifically, he rejected the GAF score as being too low in light of the record. AR 40. This
 17 conclusion was supported by the record generally and the CPC's intake evaluation as well,
 18 which found plaintiff to have normal thought processes, proper speech and behavior, and
 19 normal perceptual processes. AR 412.

20 The ALJ also based his rejection of the GAF on the fact that the workers who
 21 rendered the opinion were not "acceptable medical sources." AR 40. The regulations define
 22 "acceptable medical sources" as licensed physicians, licensed or certified psychologists,
 23 licensed optometrists, licensed podiatrists, and qualified speech language pathologists. 20
 24 C.F.R. §§ 416.913(a), 404.1513(a). The record shows that the professionals had the
 25

26 ²They also opined that his GAF ranged from 45 to 60 over the year. AR 413.

01 credentials “MHP” and “MSW.” AR 413. A professional with an MSW degree (“Masters in
 02 Social Work”) does not fall within the regulatory definition of an “acceptable medical
 03 source.” The Court has been directed to no authority that indicates that a person with an
 04 MHP degree or certification would fall within the definition.³ Absent evidence suggesting
 05 these workers were proper medical sources, it cannot be said that the decision of the ALJ to
 06 place less weight on the assessments of these professionals was error.

07 The ALJ also discounted the CPC opinions on the fact that plaintiff’s “mental status
 08 functioning was largely normal and because he appeared to have some improvement with the
 09 use of medication.” AR 40-41. These comments refer to the opinions of Dr. Kersey, to
 10 whom the CPC staff referred plaintiff for treatment. Dr. Kersey diagnosed plaintiff with
 11 “major depressive disorder” and observed a variety of symptoms, including low self-esteem,
 12 low energy, and decreased concentration. AR 470. However, he also noted signs of
 13 improvement. AR 462-67, 470-73. For instance, he noted that plaintiff had been “addressing
 14 his issues and making progress[.]” AR 468. His notes also indicate that psychiatric drugs
 15 “helped his depressive symptoms about 50%.” AR 467. Although he recognized that the
 16 drugs were only “partially effective,” he was experimenting with other potential drug
 17 therapies. *Id.*

18 3. Dr. Anderson. Plaintiff also argues the ALJ “ignor[ed]” most of Dr.
 19 Anderson’s report and that “[t]he better inference is that Mr. Belt cannot successfully
 20 work[.]” Dkt. No. 12 at 19. Dr. Anderson diagnosed plaintiff with chronic depression and
 21 affective disorder. AR 351. She was unable to conclude whether the plaintiff was suffering

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 23 ³According to the Dictionary of Initials and Acronyms Used by Counselors, “MHPs
 24 are qualified mental health providers who have been designated by an agency or hospital to
 25 meet contractual requirements with the county to perform duties in accordance with
 26 Washington State law.” See <http://www.counselingseattle.com/acronyms/i-m.htm#-M->. This
 definition, however, does not clarify whether such workers are acceptable medical sources for
 purposes of the regulations.

01 from PTSD, but did say that possible features of PTSD existed. She observed that plaintiff's
 02 depression had a "profound" impact on him. AR 351-52.

03 However, Dr. Anderson did not assess substantial functional limitations on the
 04 plaintiff's actual ability to work. Indeed, she noted he was intelligent, articulate, and capable
 05 of insight. She also noted that he had never been fired from a job, but would work only for
 06 periods of six to nine months before quitting. AR 349. She concluded that, absent
 07 improvement, he would likely bounce around from job to job. AR 351-52. The ALJ devoted
 08 three paragraphs of evaluation of Dr. Anderson's analysis and interpreted it to indicate that
 09 plaintiff is capable of work "when he so chooses." AR 40-41. The ALJ did not simply
 10 ignore Dr. Anderson's report.

11 4. Dr. Johnson. Dr. Johnson was the medical expert ("ME") who testified at
 12 the hearing. Plaintiff argues that the ALJ should have relied on his opinion that plaintiff had
 13 more restrictive limitations than those actually found by the ALJ. Dkt. No. 12 at 19-20.

14 The ME diagnosed plaintiff with depression and personality disorder. AR 75. He also
 15 assigned moderate limitations in concentration, persistence or pace, and marked limitations in
 16 social functioning. AR 76. He opined that plaintiff's ability to control his anger caused most
 17 of these limitations. AR 76. The ALJ indicated that he "essentially agree[d]" with this
 18 opinion, but found that plaintiff's limitations on social functioning were only moderate (rather
 19 than marked), when looking at the record as a whole. AR 43.

20 Because Dr. Johnson did not actually treat or examine plaintiff, he is properly
 21 characterized as a non-examining physician. Opinions from non-examining medical sources
 22 are to be given less weight than treating or examining doctors. *Lester v. Chater*, 81 F.3d 821,
 23 831 (9th Cir. 1995). An ALJ must evaluate the opinion of a non-examining source and explain
 24 the weight given to it. SSR 96-6p, at *2. The ALJ gave a lengthy explanation for why he
 25 disagreed with the marked limitation. He observed that plaintiff had periods of adequate
 26 social functioning where he could control himself, as well as intermittent periods of lashing

01 out. AR 42-43. He also pointed out that plaintiff generally interacted appropriately with the
02 medical professionals who were evaluating him for purposes of his applications. AR 43.
03 There is support in the record for these assertions. *See, e.g.*, AR 481 (Dr. Cahn reporting that
04 plaintiff had held past jobs for nine to twelve months and had left only because he became
05 unhappy or disillusioned — not because of any inability to control violent outbursts).

06 5. Other Physicians. Plaintiff argues that the ALJ did not properly consider
07 the opinions of the Disability Determination Services (“DDS”) evaluators, particularly those
08 that opined plaintiff would face problems focusing, functioning socially, and completing a
09 normal work day. Dkt. No. 12 at 20-21. Defendant argues the ALJ did not reject these
10 opinions, but rather relied on the narrative description associated with them instead of the
11 check-the-box portion of the form. Dkt. No. 14 at 11-12.

12 Several doctors from DDS evaluated plaintiff. AR 364-69, 372-73. Dr. Timothy
13 Smith opined that plaintiff could perform light work and noted that his back pain was
14 “actually more intermittent and usually occurs after some strenuous activity.” AR 364-69.
15 Dr. Flemming agreed. *Id.* Drs. Nelson and Fisher provided a mental RFC analysis. AR 370-
16 72. They assigned moderate limitations to plaintiff’s ability to maintain attention and
17 concentration, as well as with other forms of concentration, persistence, and pace. AR 371.
18 They also assigned a marked limitation on plaintiff’s ability to interact appropriately with the
19 general public and moderate limits on other forms of social interaction. AR 371.

20 The ALJ observed each of these limitations and agreed with them because they were
21 “fairly well supported in the record.” AR 44-45. He found, however, that plaintiff had “a bit
22 greater capacity for social functioning than the DDS determined.” AR 45. The ALJ gave
23 several reasons for this conclusion. First, the ALJ explained that he relied more on the
24 evaluation’s “specific” explanatory notes than the checked boxes alone. AR 44. Those notes
25 explained that the plaintiff “appears to be intelligent, articulate, and capable of insight.” AR
26 372. They also indicated that, although his depression and antisocial behaviors “may

01 occasionally affect his concentration, . . . his condition is well enough controlled that he should
 02 be able at least to carry out short and simple instruction in a reasonably consistent manner.”

03 *Id.* They also indicated that he “[w]ould do best working independently” and “in a structured
 04 consistent environment.” *Id.*; *cf.* AR 386. They did not opine that he could not work.

05 Additionally, the ALJ properly pointed out that the opinions were those of non-
 06 examining physicians and, as such were entitled to less weight. AR 45. Finally, the ALJ
 07 observed that these opinions were consistent with the opinions of Drs. Smith and Flemming,
 08 who opined that plaintiff’s physical impairments enabled him to perform light work. AR 364-
 09 69. Together, these reasons satisfy the ALJ’s obligation to evaluate the opinion of a non-
 10 examining source and explain the weight he assigns it. SSR 96-6p (1996); *see also Lester*, 81
 11 F.3d at 831.

12 Plaintiff also makes an argument in passing that the ALJ erroneously disregarded or
 13 discounted medical opinions by psychologists Rheade and Black. Dkt. No. 12 at 16. Dr.
 14 Rheade assessed plaintiff on February 11, 1999, and January 10, 2000, and Dr. Black assessed
 15 plaintiff on June 2, 2000. AR 244-51, 299-303. The ALJ appears to have determined that
 16 these psychological records “pre-date the relevant time period at issue, and are of little help.”
 17 AR 44. The application at issue was protectively filed in March, 2001. The ALJ’s
 18 determination that these reports were of little help because of their age is not an abuse of
 19 discretion that warrants reversal. Plaintiff does not seriously contend otherwise, and provides
 20 no argument or authority for reopening plaintiff’s earlier applications.

21 6. Conclusions Regarding the ALJ’s Assessments of the Extent of the Mental-
 22 Health Impairment. The plaintiff objects to the interpretation of the medical evidence
 23 rendered by the ALJ. The ALJ found that the plaintiff did, in fact, suffer from mental-health
 24 impairments. However, relying upon substantial evidence in the record, the ALJ found that
 25 the plaintiff was capable of working in the economy when he so chooses. The role of this
 26 Court is limited. As noted previously, the ALJ is responsible for determining credibility,

01 resolving conflicts in medical testimony, and for resolving ambiguities. *Andrews*, 53 F.3d at
02 1039. Where the evidence is susceptible to more than one rational interpretation, the
03 Commissioner's conclusions must be upheld. *Thomas*, 278 F.3d at 954. It is possible to
04 interpret the medical evidence in the fashion urged by plaintiff. In this case, however, it
05 simply cannot be said that the only rational interpretation of conflicts in the medical evidence
06 is that which is advanced by the plaintiff. The Commissioner's RFC determination is
07 supported by substantial evidence and must be affirmed.

08 C. The ALJ's Hypothetical to the Vocational Expert Was Accurate and Complete.

09 Plaintiff argues that the ALJ's hypothetical to the VE was "unintelligible" and that the
10 VE's response therefore had "no evidentiary value." Dkt. No. 12 at 22. He further argues
11 that the hypothetical failed to portray adequately the extent of his impairments. *Id.*
12 Defendant argues that the ALJ's hypothetical was accurate, and that he was not obligated to
13 accept the hypothetical offered by plaintiff's counsel, because it was not supported by
14 objective medical evidence. Dkt. No. 14.

15 After a claimant has demonstrated that he has a severe impairment that prevents him
16 from doing his past relevant work, he has made a *prima facie* showing of disability. *Tackett*,
17 180 F.3d at 1100. The burden then shifts to the Commissioner at step five to demonstrate
18 that, in light of the claimant's RFC, age, education, and work experience, he can perform
19 other types of work that exist in "significant numbers" in the national economy. *Id.*; 20
20 C.F.R. §§ 404.1520(f), 416.920(f).

21 When a plaintiff suffers from significant non-exertional impairments not contemplated
22 by the Medical Vocational Guidelines, the ALJ must use the principles in the appropriate
23 sections of the regulations to determine whether plaintiff is disabled. SSR 85-15, at *1;
24 *Tackett*, 180 F.3d at 1101-02. When an ALJ uses the Guidelines in this fashion to evaluate
25 non-exertional limitations not contemplated by the Guidelines, he must call upon a VE.
26 *Tackett*, 180 F.3d at 1102. In such a scenario, the ALJ must provide the VE with an accurate

01 and detailed description of the claimant's impairments, as reflected by the medical evidence
 02 of record. *Id.* at 1101. An ALJ may, however, exclude restrictions in a hypothetical question
 03 that are not supported by substantial evidence. *Osenbrock v. Apfel*, 240 F.3d 1157, 1164-65
 04 (9th Cir. 2001).

05 At the hearing, the ALJ called VE Brian Sorenson to determine what jobs, if any,
 06 plaintiff could perform. AR 45. The ALJ provided the following hypothetical: "lift/carry 20,
 07 10; stand and walk six out of eight; sit six out of eight, no heights or hazards; non public;
 08 limited contact with coworkers, limited contact with supervision. Any jobs?" AR 82. The
 09 first part of the hypothetical was designed to deal with plaintiff's physical limitations. The
 10 second part of the hypothetical ("non public; limited contact with coworkers; limited contact
 11 with supervision") was designed to deal with plaintiff's mental-health limitations. As the
 12 ALJ noted, "[t]he claimant's mental impairments cause mild difficulty with daily living
 13 activity, concentration, persistence, and pace, and moderate to marked difficulty with social
 14 functioning. There is no evidence that he has had any prolonged episodes of decompensation.
 15 As a result of these limitations, the claimant should have limited contact with co-workers and
 16 supervisors and not with the public." AR 45. When asked whether any jobs existed, the VE
 17 identified several light, unskilled jobs, including cleaner/housekeeper and small products
 18 assembler. AR 82-83.

19 The ALJ's hypothetical captured the basic functional limitations identified by the
 20 ALJ, including the plaintiff's difficulties interacting with others. Although plaintiff has urged
 21 an alternative interpretation of the evidence, the ALJ's findings and the hypothetical that was
 22 based on them were accurate and complete. The VE's testimony also highlights the
 23 significance of the ALJ's adverse credibility determination, which, as discussed above, was
 24 supported by substantial evidence.

25 The ALJ's rejection of the additional limitations offered to the VE by plaintiff's
 26 counsel did not constitute error. After the VE had responded to the ALJ's hypothetical,

01 plaintiff's counsel inquired as to whether plaintiff could still perform the identified jobs if the
02 opinions of examining Drs. Fisher and Nelson were fully credited. AR 83-84. The VE
03 responded that such limitations would "prohibit employment." AR 84. However, because the
04 ALJ appropriately discounted these opinions, he was not obligated to accept the limitations.
05 *Osenbrock*, 240 F.3d at 1164-65; *see also Magallanes*, 881 F.2d at 756-57 (noting that ALJs
06 need not accept restrictions not supported by substantial evidence as true). The ALJ thus
07 properly rejected the additional restrictions, because he found they were not supported by the
08 evidence. AR 46.

VIII. CONCLUSION

10 For the reasons stated, the ALJ's decision should be affirmed and this matter
11 dismissed. A proposed order accompanies this report and recommendation.

12 DATED this 16th day of December, 2005.

James P. Donohue
JAMES P. DONOHUE
United States Magistrate Judge